

REMARKS/ARGUMENTS

The claims have been divided into Groups as follows:

- Group I Claim(s) 41-60, 81-83, and 86, drawn to a process for dissolving at least one lipophilic compound in an aqueous phase.
- Group II Claim(s) 61-80 and 84-85 drawn to a cosmetic composition comprising at least one aqueous phase, at least one lipophilic compound and at least one block amphiphilic copolymer.

The required species elections are as follows:

If Group I, from above, is elected:

- 1) Election of a specific monomer unit of hydrophobic polymer block type from the list in Claim 41 is required.
- 2) Election of a specific hydrophobic polymer block polymerized unit recited in the lists in Claims 45, 51 and 81, consistent with the monomer to be elected above is required.
- 3) Election of a specific monomer for an ionic hydrophilic polymer block type from the lists in Claims 46-47 is required.
- 4) Election of a specific monomer for nonionic hydrophilic polymer block type from the lists recited in Claims 49-50 is required.

If Group II, from above, is elected:

- 1) Election of a specific monomer unit of hydrophobic polymer block type from the list recited in Claim 61 is required.
- 2) Election of a specific hydrophobic polymer block polymerized unit, consistent with the monomer unit elected in 1), from the lists recited in Claims 66 and 70 is required.
- 3) Election of a specific monomer for an ionic hydrophilic polymer block type recited in the lists of Claims 46-47 is required.
- 4) Election of a specific monomer for nonionic hydrophilic polymer block type from the list recited in Claim 68 is required.
- 5) Election of a specific amphiphilic copolymer type from the list recited in Claim 71 is required.
- 6) Election of a specific lipophilic compound type from the list recited in Claim 72-79 is required.
- 7) Election of specific formulation adjuvant type(s) from the list recited in Claim 80 is required.
- 8) Election of a specific essential oil type from the list recited in Claim 85 is required.

Applicants elect, with traverse, Group II, Claims 61-80 and 84-85, for examination. As a single disclosed species set, Applicants provisionally elect, for examination purposes only the following:

- 1) polystyrene-polyethylene oxide
- 2) styrene
- 3) none
- 4) polyethylene oxide
- 5) polystyrene-polyethylene oxide
- 6) 4-(tert-butyl)-4'-methoxydibenzoylmethane
- 7) a fatty substance
- 8) eucalyptus oil

Applicants respectfully traverse the Restriction Requirement on the grounds that no adequate reasons and/or examples have been provided to support a conclusion of patentable distinctness between the identified groups.

Restriction is only proper if the claims of the restricted groups are independent or patentably distinct and there would be a serious burden placed on the Examiner if restriction is not required (MPEP §803). The burden is on the Examiner to provide reasons and/or examples to support any conclusion in regard to patentable distinction (MPEP §803). Moreover, when citing lack of unity of invention in a national stage application, the Examiner has the burden of explaining why each group lacks unity with each other group specifically describing special technical features in each group (MPEP § 1893.03(d)).

The Office has asserted that Groups I and II do not relate to a single general inventive concept under PCT Rule 13.1, because under PCT Rule 13.2, they lack the same or corresponding special technical features. “The lipophilic compound in aqueous phase in the presence of amphiphilic copolymer comprising at least one of an ionic or a nonionic hydrophilic polymer block and at least one hydrophobic polymer block of Claim 61 does not present a contribution over the prior art since it is described in (U.S. patent No. 6,322,805 Issued on Nov. 27, 2001, See Abstract).”

Annex B of the Administrative Instructions under the PCT at (b) Technical Relationship states:

“The expression “special technical features” is defined in Rule 13.2 as meaning those technical features that defines a contribution which each of the inventions, considered as a whole, makes over the prior art. The determination is made on the contents of the claims as interpreted in light of the description and drawings (if any).”

Applicants respectfully submit that the Examiner has not provided any indication that the contents of the claims interpreted in light of the description was considered in making the assertion of a lack of unity and therefore has not met the burden necessary to support the assertion.

Furthermore, 37 C.F.R. § 1.475(b) states in pertinent part:

“An international or a national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn only to one of the following combinations of categories:

(1) A product and a process specially adapted for the manufacture of said product; . . .”

Applicants respectfully submit that the Office has not considered the relationship of the inventions of Groups I and II with respect to 37 C.F.R. § 1.475(b)(1).

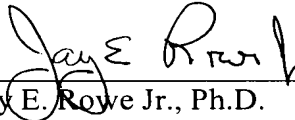
Accordingly, and for the reasons presented above, Applicants submit that the Office has failed to meet the burden necessary in order to sustain the requirement for restriction.

Applicants therefore request that the requirement for restriction be withdrawn.

Applicants respectfully submit that the above-identified application is now in condition for examination on the merits, and early notice thereof is earnestly solicited.

Respectfully Submitted,

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